

BAUMGARTNER COMPANIES

IBLA 75-375

Decided July 14, 1975

Appeal from the decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting appellant's geothermal lease application (OR 1821).

Affirmed.

1. Geothermal Leases: Known Geothermal Resources Area --
Geothermal Leases: Applications: Generally -- Geothermal Leases:
Noncompetitive Leases

An application for a noncompetitive geothermal lease must be rejected with respect to land described in the application which, although not within a known geothermal resources area (KGRA) at the time the application is filed, is designated as being within a KGRA before a lease is issued for said land.

APPEARANCES: Christopher R. Candee, Geologist, Baumgartner Companies, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

"Baumgartner Companies" appeals from a decision of the Oregon State Office, BLM, dated February 19, 1975, rejecting noncompetitive geothermal lease application OR 11821 with respect to all land in Sections 28 and 29, T. 32 S., R. 36 E., Willamette Meridian, Oregon, because the subject lands were included within the Alvord known geothermal resources area (KGRA) by designation of the United States Geological Survey (Survey). Although said lands were not included in a KGRA when the application was initially filed, Survey advised the BLM by memorandum dated January 30, 1975, that the subject lands, among others, were included in the Alvord KGRA effective August 1, 1974.

Appellant alleges as grounds for this appeal that the land embraced in the application was not within a KGRA when the application was filed on January 31, 1974, and that a decision of the BLM dated October 7, 1974, rejecting the application in part on other grounds and requiring the applicant to submit a proposed plan for diligent exploration (which he has done), demonstrates that there was no basis for determining the lands to be within a KGRA at that time (October, 1974).

Regarding the former contention, section 4 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1003 (1970), provides, in part, with respect to the leasing of geothermal resources that:

If lands to be leased under this chapter are within any known geothermal resources area, they shall be leased to the highest responsible qualified bidder by competitive bidding under regulations formulated by the Secretary. * * *

Thus the controlling statute provides for competitive leasing with respect to land in a KGRA.

A regulation implementing the Act, 43 CFR 3210.4 (1974), provides:

If, after the filing of an application for a noncompetitive lease and before the issuance of a lease, or amendment thereto, pursuant to that application, the land embraced in the application becomes included within a KGRA, the application will be rejected as to such KGRA lands. * * *

[1] This Board has applied this rule holding that section 4 of the Geothermal Steam Act, supra, requires competitive bidding for geothermal leases embracing lands which are determined to be within a KGRA prior to the issuance of any noncompetitive lease on the land, even though the KGRA is not ascertained until after the noncompetitive lease application is filed. Hydrothermal Energy and Minerals, Inc., 18 IBLA 393, 401, 82 I.D. 60, 64 (1975); Robert G. Lynn, 19 IBLA 167, 169-170 (1975).

The issue of whether a noncompetitive geothermal lease may be issued for land which is found to be in a KGRA subsequent to the filing of the application but prior to lease issuance has been recognized by this Board as being closely analogous to the question

of whether a noncompetitive oil and gas lease may be issued for land found to be in a known geological structure of a producing oil or gas field (KGS) subsequent to the filing of the offer but prior to lease issuance under Section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1970). Hydrothermal Energy and Minerals, Inc., supra. No rights to a noncompetitive oil and gas lease accrue before the lease has been executed by the appropriate official of the Government. Geral Beveridge, 14 IBLA 351, 355, 81 I.D. 80 (1974). Furthermore, a noncompetitive lease offer must be rejected where either before or after the filing of the offer and prior to the time of the issuance of the lease the land is determined to be within a KGS, even though such offer may have been conditionally approved prior to the inclusion of the land within such structure. Geral Beveridge, supra at 354.

Accordingly, the fact raised by the appellant that the land was not classified as being within a KGRA at the time that his application was filed is not controlling where the land is determined to be in a KGRA prior to issuance of a noncompetitive lease. We also note, in response to appellant's other argument, that the decision of October 7, 1974, by the BLM cannot be accepted as having any bearing on the issue of when the land described in the application was determined to be within a KGRA. This is so because the responsibility for determining the existence of a KGRA has been delegated by the Secretary of the Interior to Survey and not to the BLM. 220 DM 4.1(H); Hydrothermal Energy and Minerals, Inc., supra at 397.

Nothing that appellant has asserted provides an adequate reason for our inquiring further into the basis for Survey's determination of the KGRA.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

I concur:

Frederick Fishman
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING SPECIALLY:

It is not clear from the record wherein appellant Baumgartner Companies was "adversely affected" by the decision which denied the lease to Franklin W. Baumgartner. 43 CFR 4.410. If Baumgartner Companies is a separate entity claiming an interest in Baumgartner's application to lease, there is a question of whether appellant meets the legal requirements incumbent upon an assignee. If Baumgartner Companies is another name for Franklin Baumgartner, then there is a further question as to the authority of Christopher R. Candee, Geologist, to represent Mr. Baumgartner. 43 CFR 1.3.

While the question of standing to appeal should ordinarily be resolved first, it is expeditious in this case to proceed with a resolution of the appeal on the merits. To avoid the deduction that appellant has standing, however, I would add the caveat that the Board does not rule on the issue. Even if it is determined that appellant has standing, it is clear that he is not entitled to relief.

Joseph W. Goss
Administrative Judge

